

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

TERRISA DRAKE,

*Plaintiff,*

vs.

COLLECTECH DIVERSIFIED, INC.,  
LUBBOCK POWER & LIGHT,

*Defendants.*

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SA-21-CV-00147-OLG

**REPORT AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE**

**To the Honorable Chief United States District Judge Orlando L. Garcia:**

This Report and Recommendation concerns the above-styled cause of action. All dispositive pretrial matters in this case were referred to the undersigned for disposition pursuant to Western District of Texas Local Rule CV-72 and Appendix C [#9]. The undersigned has authority to enter this recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). For the reasons set forth below, it is recommended that this case be dismissed for want of prosecution.

**I. Background and Analysis**

Plaintiff Terrisa Drake, proceeding *pro se*, filed this action on January 20, 2021, in state court against Collectech Diversified, Inc. and Lubbock Power and Light, disputing a debt. (Small Claims Citation [#1] at 8.) Defendant Collectech Diversified removed the case to this Court on February 15, 2021, invoking this Court's federal question jurisdiction due to the presence of a federal claim under the Fair Debt Collection Practices Act and Fair Credit Reporting Act. (Notice of Removal [#1] at 1.)

Both Defendants filed Answers, and Defendant Lubbock Power and Light promptly moved for judgment on the pleadings following removal, arguing Plaintiff failed to allege she is

a consumer or that Lubbock Power and Light is a debt collector subject to the Fair Debt Collection Practices Act. (Motion [#8].) In response to the motion, the Court ordered Plaintiff to file an amended pleading that satisfies the Rule 8 of the Federal Rules of Civil Procedure and that attempts to cure the deficiencies identified in Lubbock Power and Light's motion on or before April 8, 2021. To date, Plaintiff has not filed the ordered amended pleading.

A district court may dismiss an action for failure to prosecute or to comply with any order of the court. *McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir.1988) (per curiam); Fed. R. Civ. P. 41(b). In light of Plaintiff's failure to respond to the Court's Order to file an amended pleading that satisfies the requirements of Rule 8 and addresses the deficiencies identified in the pending motion for judgment on the pleadings, the Court will recommend that Plaintiff's claims be dismissed for want of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

## **II. Conclusion and Recommendation**

Having considered the record in this case, the undersigned **recommends** that this case be **DISMISSED FOR WANT OF PROSECUTION**.

## **III. Instructions for Service and Notice of Right to Object/Appeal**

The United States District Clerk shall serve a copy of this report and recommendation on all parties by either (1) electronic transmittal to all parties represented by attorneys registered as a "filing user" with the clerk of court, or (2) by mailing a copy to those not registered by certified mail, return receipt requested. Written objections to this report and recommendation must be filed **within fourteen (14) days** after being served with a copy of same, unless this time period is modified by the district court. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The party shall file the objections with the Clerk of Court and serve the objections on all other parties. A party filing

objections must specifically identify those findings, conclusions or recommendations to which objections are being made and the basis for such objections; the district court need not consider frivolous, conclusive or general objections. A party's failure to file written objections to the proposed findings, conclusions and recommendations contained in this report shall bar the party from a *de novo* determination by the district court. *Thomas v. Arn*, 474 U.S. 140, 149–52 (1985); *Acuña v. Brown & Root, Inc.*, 200 F.3d 335, 340 (5th Cir. 2000). Additionally, failure to file timely written objections to the proposed findings, conclusions and recommendations contained in this report and recommendation shall bar the aggrieved party, except upon grounds of plain error, from attacking on appeal the un-objected-to proposed factual findings and legal conclusions accepted by the district court. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996) (en banc).

SIGNED this 13th day of April, 2021.



ELIZABETH S. ("BETSY") CHESTNEY  
UNITED STATES MAGISTRATE JUDGE